STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RON NUNN FARMS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 76-CE-ll-S 4 ALRB No. 34

DECISION AND ORDER

On December 9, 1977, Administrative Law Officer (ALO) Ben Grodsky issued his Decision in this proceeding. Thereafter, Respondent and General Counsel each filed exceptions and a supporting brief.

Pursuant to the provisions of Section 1146 of the Labor Code, [1/] the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel .

The Board has considered the record and the attached Decision in light of the exceptions [2/] and briefs and has decided

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[1/] All references herein are to the Labor Code.

[2/] Respondent's exceptions relate in part to credibility resolutions made by the ALO based upon demeanor. In the absence of clear error, we will not disturb such resolutions. Adam Dairy dba Rancho Dos Rios, 4 ALRB No. 24 (1977); El Paso Natural Gas Co., 193 NLRB 333, 78 LRRM 1250 (1971); Standard Dry Wall Products, Inc., 91 NLRB 544, 26 LRRM 1531 (1950). We have reviewed the record and find the ALO's credibility resolutions are supported by the record as a whole.

to affirm the rulings, findings, and conclusions of the ALO to the extent consistent herewith, and to adopt his recommended order as modified herein.

The ALO found that Respondent violated Sections 1153 (c) and (a) of the Act by its discriminatory refusal to rehire 16 former employees because they had engaged in activities protected by Section 1152 of the Act, or because they were related to and closely associated with employees who engaged in such activities.

All of the alleged discriminatees had worked for Respondent in 1975 under the supervision of Julia Ruiz in hoeing of various crops and harvesting of tomatoes. Some had also worked for Respondent for several years preceding 1975. With the exception of Alegria Orosco, the discriminatees fall into two family groups. Elia, Hilda, Irma, Lupe, Maria de Jesus, and Socorro Martinez and Lourdes, Maria de Jesus, and Raquel Vega are all sisters, sisters-in-law or cousins to each other. Similarly, Maria, Rosa, and Rosalia Hurtado and Bertha, Elvira, and Eva Ordaz were all close relatives (related to Rosa as sisters-in-law, cousins and aunt). The record shows that Julia Ruiz was aware that many of these women were related, by blood or marriage, to each other.

The discriminatees, again with the exception of Alegria Orosco, fall naturally together in two groups for two other reasons. All came, either several years ago or on a seasonal basis each year, from the same town in Mexico - Purepero, Michoacan. According to the credited testimony of Imelda Jimenez, a worker still employed by Respondent,

Julia Ruiz knew of this connection also and referred to the discriminatees as the "girls from Purepero".

Most demonstrative of the grouping of the discriminatees, however, is their past history of being hired by Julia Ruiz together or through each other. Thus, in 1975, Julia Ruiz telephoned Lupe Martinez to notify her that it was time for her and her relatives to start work at the beginning of the hoeing season. As a result of that call, Lupe and Socorro Martinez and Raquel and Maria de Jesus Vega all started work together at the beginning of hoeing.[3/] The same hiring pattern occurred at the start of the hoeing season in 1974 when Julia Ruiz called Hilda Martinez prior to the commencement of hoeing and as a result Hilda, Socorro and Lupe Martinez, and Lourdes and Maria de Jesus Vega all started work on the first day of hoeing. Moreover, in 1975, all other members of the Martinez-Vega family group were subsequently hired by Julia Ruiz through the previously-hired members. Thus, when more workers were needed, Julia Ruiz would tell one of the already working family members how many other women she should bring to work. The pattern of hiring some family members through others applied during all the years that the discriminatees were employed by Respondent.

The same pattern applied to the Hurtado-Ordaz family. Thus, Rosa Hurtado contacted Julia Ruiz in July of 1975 and asked for a job for herself and Rosalia Hurtado. They were

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[3/] Both Lupe Martinez and Maria de Jesus Vega believed that Lourdes Vega also started hoeing with them in 1975, but Respondent's records indicated that she started a month later than they.

hired and within weeks had requested and obtained work for Eva, Bertha, and Elvira Ordaz and Maria Kurtado.

Both family groups had a history of union activity known to Julia Ruiz. Thus, in 1974, Teamster organizers came to Respondent's ranch and sought authorization signatures from employees. Lupe, Irma, Elia, Socorro and Maria de Jesus Martinez and Lourdes, Raquel, and Maria de Jesus Vega all signed. According to the credited testimony of several witnesses, Julia Ruiz subsequently singled out and warned the signers that Respondent did not want a union and that, although they would be given another chance, if they supported a union again there would be no more work for them. In 1975, the Martinez-Vega family again made its union support known to Ruiz first by their openness in meeting with and assisting union organizers during lunch breaks in the presence of Ruiz and more specifically by their willingness to act as representatives for the union in the election process. Thus, Raquel and Maria de Jesus Vega both attended the October 1975 pre-election conference as representatives of the union and acted as union observers for the election.

The Hurtado-Ordaz family did not work in 1974, but in 1975, Rosalia became a visible supporter of the union by attending the pre-election conference as a representative of the union and the other family members met openly with union organizers during lunch breaks in the presence of Ruiz and gave the organizers names and addresses of other employees to contact.

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That Julia Ruiz was aware of and hostile to the union activities of both family groups is clear from the credited testimony of several witnesses. Thus, Maria de Jesus Vega, Raquel Vega, Lupe Martinez and Hilda Martinez all testified to anti-union statements by Julia Ruiz in response to their signing authorization cards for the Teamsters 'in 1974. Similarly, several witnesses testified to statements by Julia Ruiz during the 1975 election campaign that persons who wanted a union should go to work with a company that already has a union and that those who sign with a union should leave and not come back with their "tail between their legs". In addition, Julia Ruiz interrogated Raquel Vega about her union sentiments and when Vega stated that she would sign for the union, Ruiz told her that she would not give jobs in the future to those who signed for the union. Finally, according to the credited testimony of Imelda Jimenez, when Julia Ruiz was asked, at the start of the 1976 hoeing season, where the girls from Purepero were, she replied that they wanted a union so they should stay with the union.

Respondent's central defense to the charge of refusal to rehire these employees is that it had an established system pursuant to which any employee who wanted to work in hoeing or harvesting had to sign a list either at Julia Ruiz's home or at Respondent's office. Respondent contends that because none of the discriminatees had signed such a list prior to the start of hoeing in 1976, they were not rehired. Many of the discriminatees testified, however, that such, a sign-up system was

not the method by which any of them had been hired in the past. Although Julia Ruiz and several other Respondent witnesses testified to the contrary that the sign-up system had been uniformily applied in the past, Respondent produced only a random assortment of undated lists of names, some obviously prepared in one persons' handwriting, and was not able to show a correlation between the purported sign-up lists and subsequent employment rolls. Respondent did produce a sign-up list for hoeing in 1976, but a comparison of the list with the employment roll for hoeing showed that at least two persons who started work on the first day of hoeing did not appear on the sign-up list and six of the eight workers hired after the first day of hoeing were not on the sign-up list.

Thus the ALO properly found that each of the discriminatees had either personally engaged in activities in support of the UFW or were part of an identifiable group, some members of which had engaged in union activity. He also found that both the nature of the groups and the union activity of some members were known to Julia Ruiz. Furthermore, Julia Ruiz changed her hiring practices with respect to the discriminatees from the method used in previous years because of their union activity. In view of the above facts and the entire record, the reasons asserted by Respondent for its failure to rehire the discriminatees are rejected.

We turn now to the question of whether each alleged discriminatee took the steps necessary to be rehired under the

previous practice as applied to her and, if so, what each woman's effective date of reemployment would have been. In making that determination we note that the size of Respondent's hoeing crew in 1976 was substantially smaller than its 1975 crew so that all persons who worked in 1975 might not have been rehired in 1976 even absent unlawful discrimination. The starting size of the two crews was similar but the 1976 crew did not grow to the extent the 1975 crew did. Notwithstanding the smaller crew size in 1976, we still conclude that some of the alleged discriminatees were victims of illegal refusals to rehire.

Following previous hiring practices, one of the Martinez family would have been notified before the start of the 1976 hoeing season, e.g. as Lupe was notified by Julia in 1975. In 1974 and 1975 respectively, five and four members of the family were hired at the beginning of hoeing as a result of Julia Ruiz's calling one member. The evidence shows that Lupe Martinez, Socorro Martinez, Lourdes Vega and Maria de Jesus Vega were all present in Brentwood prior to the March 15 start of the 1976 hoeing season and all had started at the beginning of the season in 1974 or 1975. Absent Respondent's discriminatory change in hiring practice, we find that all of these employees would have been rehired at the start of the 1976 hoeing season.

According to Respondent's records, five persons, two who were hired on the first day of the 1976 hoeing and three who were hired for hoeing in April 1976, had never worked for Respondent in hoeing before. Two had never worked for Respondent

in any capacity and the other three had been first employed in the 1975 tomato harvest. A sixth person, who started in May 1976, had first been employed by Respondent in hoeing in 1975 and a seventh, who also started in May 1976, had worked in hoeing in 1970 and 1975, but not in any of the intervening years. As Respondent's witnesses testified that priority in hiring is given to persons who had previously worked for Respondent[4/] and as the experience of the Martinez and Vega families established that they were consistently rehired for several years prior to 1976, we conclude that these employees had a reasonable expectation of being rehired in the same way in 1976 before persons with less seniority. We find that absent illegal discrimination, Hilda Martinez, who had worked for Respondent since 1972, Raquel Vega who had worked for Respondent since 1973, and Irma, Elia, and Maria de Jesus Martinez, all of whom had worked for Respondent since at least 1974, would have been reemployed in the normal way, through their relatives' requests to Julia Ruiz, as openings became available in April 1976. Instead, two openings on April 12, one on April 20, and

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[4/]Respondent's testimony was that people were hired in order of relative seniority among those who had signed up.

two on May 8 were filled by persons with less seniority than the Vega and Martinez family.[5/] We find that Hilda Martinez, Raquel Vega, and Irma, Elia, and Maria de Jesus Martinez were entitled to be reemployed as *of* those dates.[6/]

The Hurtado-Ordaz family had started working for Respondent in 1975. Rosalia and Rosa Hurtado started work in hoeing in June or July, the day after Rosa called Julia and asked for a job. About a week after starting work, Rosa asked for work for Bertha Ordaz and Maria Hurtado; they were hired a week later by Julia Ruiz telling Rosa that they should report to work. A week after Bertha and Maria were hired, Rosa asked Julia Ruiz for work for Eva and Elvira Ordaz. About three weeks after the tomato harvest started, Julia Ruiz told Rosa that those women also should report for work. The whole family worked through the end of the tomato harvest.

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[5/]Prior to April 12, at least two members of the Martinez-Vega family had contacted Julia Ruiz after they learned they had not been called at the commencement of hoeing. Thus, Maria de Jesus Vega called Julia in Lupe Martinez' presence in March and was told by Julia that Julia would call her if there was work. Also Hilda Martinez called Julia to ask for work around March 31 to April 2. Even though these members of the family, with several years seniority, had personally expressed their desire to work, Julia hired others with less seniority. Julia's failure to hire the above-named persons confirms our conclusion that failure to specifically contact Julia to request work was not the real ground for refusing to hire the discriminatees.

[6/]Respondent contends that there is no discrimination against Irma and Lupe Martinez because Julia Ruiz offered them cherry-packing shed jobs, which they did not accept. The record is clear, however, that at most Julia merely suggested that the two women could go to the office and apply, for such work.

In 1976 Rosa, Rosalia and Maria Hurtado also sought work with Respondent. Rosalia and Maria went to Respondent's office in March and asked for work; they were told to leave their names and telephone numbers, and they did so. In May, Rosa went to Respondent's office seeking work because the family had received no response to Rosalia's March request, and left her name and telephone number. To be sure to cover every approach, Rosa also went to Julia Ruiz's house to ask for work. Ruiz told her that Respondent was not hiring at the moment, but that Rosa should leave her name and telephone number at the office and wait to be called for work.

Respondent contends that the Hurtados were not hired because they contacted Julia after hiring for hoeing was complete but while it was too early to express an interest in tomato harvest work. Rosalia and Maria Hurtado signed up for work in March. Although other applicants were hired to work in hoeing after that date, we cannot find that Respondent's failure to call these people for the few additional jobs in hoeing was discriminatory, especially as they had only a partial season's seniority in hoeing. Respondent did, however, hire a substantially greater number of people to work in the tomato harvest, work the Hurtados had done for a full season during the preceding year. Despite the fact that Rosalia, Maria and Rosa had all signed up indicating they wanted work when it was available, and although Julia Ruiz had explicitly told Rosa that she should leave her name and telephone number at the office and wait to be called for work, at a time when all hiring for hoeing

was over and the next hiring would be for the tomato harvest, Respondent now argues that these discriminatees applied too early for tomato harvest work. In light of the record evidence, that argument is rejected. In the absence of any plausible explanation for Respondent's failure to rehire these three women for work in the tomato harvest, we agree with the ALO that these discriminatees were also victims of Julia Ruiz's plan to weed out union supporters. Accordingly, we find that Respondent discriminatorily refused to rehire Rosalia, Maria and Rosa Hurtado at the commencement of the tomato harvest.

The evidence with respect to the other members of the Hurtado-Ordaz family is less convincing. Although they had been hired for the tomato harvest work in 1975, through efforts of Rosa and Rosalia who had been hired first, that was the first year they had worked for Respondent and their pattern of hiring was not so firmly established as that of the Martinez-Vega family. Several persons other than the Ordazes had been hired the previous year by Julia Ruiz through Rosa Hurtado so that the cohesiveness of the Hurtado-Ordaz family group, and therefore the appearance of discrimination against them as a group, is less apparent. Clearly Respondent's liability for the chain-reaction effects of its refusal to rehire persons who had been instrumental in obtaining work for others in the past must have limits. We believe that holding Respondent liable for the non-hiring of the Ordaz family would go beyond the limits of reasonably foreseeable consequences of its direct discrimination against the Hurtados,

in light of the single-season employment history and the relative non-cohesiveness of the Hurtado-Ordaz family group in comparison to the Martinez-Vega group. Accordingly, we conclude that there was no violation of the Act with respect to Respondent's failure to hire Bertha, Elvira and Eva Ordaz. We therefore dismiss the allegations of the complaint to the contrary.

The ALO also found that Alegria Orosco was discriminatorily refused reemployment in 1976. We disagree. Although Respondent's knowledge of Orosco's union activity was apparent from the fact that she was a union representative at the preelection conference and an observer on behalf of the union in the election, she did not seek reemployment with Respondent in 1976. Orosco had originally worked for Respondent in 1975, first in cherry packing and later in the tomato harvest. She obtained the harvest work by calling Julia Ruiz, whom she knew, and asking for a job. Orosco testified that she did not call Ruiz or otherwise ask for work at Respondent's operation in 1976 because, on the day of the election when she was acting as a union observer, Julia Ruiz had appeared angry with her and because Julia did not speak to her on those occasions after the election when they saw each other in town. Also Julia had told Orosco during the 1975 election campaign that those who were involved with the union would not get jobs the following year.

We find those facts insufficient to establish a refusal to rehire. Here Orosco did not follow her prior year's practice of requesting a job, but merely presumed she would not be

rehired. If that conduct were sufficient to establish liability in Respondent for failure to rehire, the only way Respondent could have avoided liability would have been to seek out Ms. Orosco and offer her work. Since that was not the method used to hire her in the past, Respondent cannot be required to have taken those steps in 1976. We therefore dismiss the allegations of the complaint as to Alegria Orosco.

ORDER[7/]

By authority of Labor Code Section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent, Ron Nunn Farms, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to hire or rehire any employee or otherwise discriminating against any employee in regard to their hire or tenure of employment or any term or condition of employment to discourage employees' membership in, or activities on behalf of United Farm Workers of America, AFL-CIO, or any other labor organization.

(b) In any other way interfering with, restraining or coercing employees in the exercise of their Section 1152 rights.

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7/The ALO incorrectly framed the cease and desist order narrowly. We adopt a broad order because the unfair labor practices found "strike at the very heart of employee rights guaranteed by the Act". Omico Plastics, Inc., 184 NLRB 767, 74 LRRM 1619 (1970).

2. Take the following affirmative actions which will effectuate the policies of the Act:

(a) Immediately offer Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martinez, Elia Martinez, Socorro Martinez, Hilda Martinez, Maria de Jesus Martinez, Rosa Hurtado, Rosalia Hurtado, and Maria Hurtado reinstatement to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges, and make them whole for any losses (along with interest thereon at a rate of seven percent per annum) they have suffered as a result of Respondent's failure to rehire them.

(b) Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due and the rights of reinstatement under the terms of this Order.

(c) Sign the attached notice and post copies of it at times and places to be determined by the Regional Director. The notices shall remain posted for a period of 60 days. Copies of the notice, after translation by the Regional Director in appropriate languages, shall be furnished by Respondent in sufficient numbers for the purposes described herein. Respondent shall exercise due cars to replace any notice which has been altered, defaced, or removed.

(d) Hand out the attached notice to all employees employed during the next hoeing and tomato harvest seasons.

(e) Mail copies of the attached notice in all appropriate languages, within 31 days after receipt of this Order, to all employees employed during the 1976 hoeing and tomato harvest seasons.

(f) Arrange for a representative of Respondent or a Board agent to read the attached notice in appropriate languages to the assembled employees of Respondent on company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

(g) Notify the Regional Director in writing, within 31 days from the receipt of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Dated: June 1, 1978

Gerald A. Brown, Chairman

Robert B. Hutchinson, Member

John P. McCarthy, Member

NOTICE TO EMPLOYEES

After a trial at which each side had a chance to present its case, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farmworkers these rights:

(1) to organize themselves;

(2) to form, join or help unions;

(3) to bargain as a group and choose whom they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to hire or re-hire any person, or otherwise discriminate against any employee in regard to his or her employment, to discourage union membership, union activity or any other concerted activity by employees for their mutual aid or protection.

WE WILL offer Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martinez, Elia Martinez, Soccoro Martinez, Hilda Martinez, Maria de Jesus Martinez, Rosa Hurtado, Rosalia Hurtado, and Maria Hurtado their old jobs back, and we will pay each of them any money each may have lost because we did not rehire them in 1976.

Dated:

Ron Nunn Farms

By:_____
(Representative (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Ron Nunn Farms (UFW)

4 ALRB No. 34
Case No. 76-CE-ll-S

ALO DECISION

The ALO found that Respondent violated Sections 1153 (c) and (a) of the Act by its discriminatory refusal to rehire 16 former employees because they engaged in union activities, or were related to or closely associated with employees who engaged in such activities. The ALO rejected Respondent's defense that the employees had not made a proper application for rehire.

Citing Ernst Construction Co., 217 NLRB 1069, the ALO concluded further that where Respondent changed its method of rehiring without notice to the employees, and where this was done for discriminatory reasons, the action was in violation of Section 1153 (c) of the Act.

BOARD DECISION

The Board affirmed the ALO's finding of violations as to 12 of the 16 employees, but dismissed the allegations of the complaint as to the other four.

The discriminatees here fell into two family groups: the Martinez-Vega family and the Hurtado-Ordaz family. Members of both groups had a history of union activity known to Respondent. The Board distinguished these two groups by looking to their respective past patterns of hiring and length of previous employment.

Members of the Martinez-Vega family had fulfilled the previously applicable requirements for rehire prior to the start of the 1976 hoeing season. The Board held that absent Respondent's discriminatory change in hiring practice, it would have notified one of the employees in this group of the availability of employment, and that all of these employees had a reasonable expectation of being hired at the start of the hoeing season before persons with less seniority.

The past pattern of hiring applicable to the Hurtado-Ordaz family was not so well established as that of the Martinez-Vega family, since the Hurtado-Ordaz group had only worked for Respondent for one year previously.

The Board held that as the Hurtados had taken the necessary steps to be rehired for the tomato harvest under the practice previously applicable to them, Respondent's refusal to rehire them was an unfair labor practice.

The refusal to rehire the Ordazes however was held to be not in violation of the Act because it was not a reasonably-forseeable consequence of Respondent's direct discrimination against the Hurtados.

The Board also rejected the ALO's finding that Alegria Orozco was discriminatorily refused employment in 1976, because she did not seek reemployment with Respondent as was her practice in previous years.

DY Remedial order requires Respondent employer to rein state the 12 discriminatees, to pay them back-pay plus seven percent interest, and to post, distribute, and read an appropriate Notice.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATION BOARD

In the matter of:	
RON NUNN FARMS Respondent,	
and	Case No. 76-CE-ll-S
UNITED FARM WORKERS OF AMERICA, AFL-CIO Charging Party	

Daniel G. Stone, Esq..
for the General Counsel

Littler, Mendelson, Fastiff & Tichy,
by Alan S. Levins, Esq.
for the Respondent

Curt Ullman, for the
Charging Party

DECISION AND RECOMMENDED ORDER

Statement of the Case

Ben Grodsky, Administrative Law Officer: This case was heard before me in Brentwood, California, on October 4, 5, 6, 7, 11, 12, 14, and 17, 1977, on a charge filed by United Farm Workers of America, AFL-CIO (hereinafter called the UFW or the Union) on April 13, 1976, an amended charge filed May 11, 1977, and a second amended charge filed on September 16, 1977, all of which charges duly served on Ron Nunn Farms, Respondent, herein.[1/] A complaint was issued on September 16, 1977, an amended complaint was issued on October 5, 1977, both were duly served on all parties. Both complaints alleged that Respondent had violated Sections 1153 (a) and (c) of the Agricultural Labor Relations Act (hereinafter called the Act).

1/ Respondent contended there were technical defects in the charges. Respondent could not show that the defects substantially affects its rights. In the absence of such showing, such technical defects are disregarded under the provision of 8202.10 of the Board's regulations.

When the hearing opened, counsel for the General Counsel (hereinafter called General Counsel) moved to amend the complaint by adding the names of Socorro Martinez, Hilda Martinez and Maria de Jesus Martinet as alleged discriminatees in paragraph 7(a) of the complaint. Over objection of the Respondent the motion was provisionally granted. In granting the motion, I stated that if Respondent would need more tine to prepare its defence because of the amendment after the General Counsel's case was in, I would consider a request for continuance. No such request was made.

The original charge alleged violation of Sections 1153(a) and (c) of the Act. The amendments also involved violations of the same provisions of the Act. Since the new charges did not involve allegation of violation of previously unmentioned provisions of the Act} the amendment is appropriate. Agro Corp., 3 ALRB No. 6k, at p. 13 in ALO's decision and cases cited therein: Bseber, Inc. v. NLRB, 390 F2d 127, 129-30 (C.A.9). See also Anderson Farms Co., 3 ALH3 N. 67 to the effect that where the conduct is fully litigated the Board may find additional violations even if such conduct was not included in the complaint.

Thereafter, during the course of the hearing, General Counsel moved to delete the name of Maricala Kernandez as a discriminatee. Without objection, the notion was granted. At the close of the General Counsel's case Respondent moved to dismiss the complaint in its entirety because there was no allegation that the alleged discriminatee engaged in union activity or that such union activity was known by Respondent. In addition, motions to dismiss were made as to Rosa Hurtardo, Maria Huruadc and Rosalia Hurtado and Hilda Martires. These motions were taken under consideration and are disposed of in this decision.

A representative of the Union made a motion to intervene in these

proceedings. Without objection the motion was granted.

All parties were given full opportunity to participate in the hearing. Time for filing briefs was extended to November 28, and the Charging Party, General Counsel and Respondent each filed a timely brief in support of their respective positions.

Upon the entire record, including the hearing transcript, the exhibits, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction.

Ron Nunn Farms is a sole proprietorship owned by Ronald Nunn which is engaged in agriculture in the vicinity of Brentwood, California. The crops grown by Respondent include tomatoes, sugar beets, lettuce and cherries. I find that the Respondent is an agricultural employer within the meaning of Section 1140.4(c) of the Act.

The parties stipulated, and I find, that the Union is, and at all times material herein has been, a labor organization representing agricultural employees and is therefore a labor organization within the meaning of Section 1140.4(f) of the Act.

The parties stipulated, and I find, that Rosario Lopez and Julia Ruiz are supervisors of Respondent within the meaning of Section 1140.4 (j) of the Act.

II. The alleged unfair labor practices.

The complaint as amended alleges that Respondent refused to rehire Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martinez, Elia Martinez, Socorro Martinez, Hilda Martinez and Maria de Jesus Martinez at the beginning of the hoeing season in about March 1976; Rosa Kurtado,

Rosalia Hurtado, Maria Hurtado, Bertha Ordaz, Elvira Ordaz and Eva Ordaz in or about May, 1976: and Alegria Orozco in about late July or early August to work on the tomato harvest and thereby interfered with, restrained, and coerced the employees in the exercise of their rights to self-organization.

Respondent denies generally each of the allegations that the failure to rehire was for discriminatory reasons and sets forth certain affirmative defences, as follows: The Complaint fails to state a cause of action. No charge was filed alleging the conduct complained of and therefore the Board was without authority to issue a Complaint. The Board lacks jurisdiction because the actions complained of are barred by the statue of limitations. The Board acted "arbitrarily, capriciously, and in the utmost bad faith", to the Employer's prejudice. The Board is guilty of laches in that it has failed and/or refused to afford Respondent a prompt and speedy trial on the merits. The inaction of the Board violated the Respondent's due process rights and its right to a fair and speedy trial. The Complaint is vaguely written and imprecise. The relief prayed for is unwarranted. Respondent prays that the Complaint be dismissed in its entirety and that the Respondent be awarded costs and attorney's fees. The affirmative defences will be considered below.

III. Sequence of events.[2/]

All the alleged discriminatees were members of the crew of Julia Ruiz and were engaged in hoeing of several crops and in tomato harvesting. When Ronald Nunn, the owner and supervisor of the farm, determinted that it was time to begin hoeing operations (generally in March or early April), he

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2/ The testimony of all of the witnesses has been considered. In evaluating the testimony of each witness, inconsistencies and conflicting evidence was considered. The absence of a statement of resolution of a conflict in specific testimony, or an analysis of such testimony does not mean that such did not occur. (See Bishop and Malco, Inc., d/b/a Walker's, 159 N.L.R.B. 1159; 1966.)

would notify Ruiz the date to commence work and number of employees he wanted. Ruiz would then hire the employees, instruct them when to report for work and supervise them at work. The hiring procedure is in dispute and will be more fully described and considered below.

The discriminatees are to a large extent related to each other by blood or marriage[3/] and all but one come from a town or village named Pereparo,[4/] in the State of Michocan, Mexico. Most of them generally workeduntil the end of the tomato harvest, generally late in October, and went to Pereparo some time between then and the following spring.

In about July 1974, several representatives of the Teamsters Union appeared at the field where the employees were working and secured written authorizations for representation for some of the employees. Teamsters then sent a letter to Respondent demanding recognition as bargaining representative for the employees. Respondent demanded that Teamsters prove their majority status in a secret ballot election. Teamsters dispatched a telegram threatening economic action if they were not granted recognition, and Nunn reiterated his offer to consent to a secret election.

Maria de Jesus Vega, Lupe Martinez, Racquel Vega, and Hilda Martinez all testified regarding the Teamster incident. None had made any notes or

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2/ (cont 'd) Further., to the extent that a witness is credited only in part, it is done upon the evidentiary rule that it is not uncommon "to believe some and not all of a witness' testimony". (N.L.R.B. v. Universal Camera Corporation, 179 F.2d 7^9 (C.A.2d), vacated and remanded on other grounds in 340 U.S. 474: 1951.) Finally, consideration is given to the fact that most of the witnesses testified in Spanish and translation of both questions and answers, even using the best of interpreters, is imprecise.

3/ The Vega and Martinez families are sisters, cousins or sisters-in-law the Ordaz and Hurtado families are also an extended family group.

4/ The spelling is as it appears in the transcript. The name is spelled in the briefs as Pureparo.

or written memoranda regarding the incident and testified from memory. There were some differences in their recollections but the main outline of their testimony is consistent. In essence, they testified that several days after they had signed the authorizations Ruiz singled out/those who signed for the Teamsters, by name, and spoke to them in a group. She stated that Mr. Nunn did not want a union in his farm, that she would give them another chance, but if they did it again there would be no more work for them. She also asked them to write to Teamsters and rescind the authorization they had signed. They also testified that Rosario Lopez told them he had once been a member of a union and it had not been to his advantage, and said if they would abandon the union they would receive a raise in pay. Nunn testified that the Teamsters had not supplied him with a list of the employees who had signed authorizations. Ruiz denied that she had spoken to the employees or that she knew who had signed authorizations. Lopez also denied speaking to the employees.

In late September, 1975, the Union (UFW) commenced an organizing campaign among Nunn's employees. During the last two weeks of the campaign Union organizers were at the fields where the employees were working and discussed the Union's position with them at lunch time. Both Ruiz and, at times, Rosario Lopez were in the vicinity of the employees who were eating lunch during these discussions. Lopez was in charge of the tomato harvesting machines, and this organizing campaign occurred during the tomato harvest season. Ruiz customarily worked along with the tomato sorters, the women she supervised. She customarily took lunch at the same time when they stopped for lunch and generally ate with some of the girls. I find that the actions of Ruiz and Lopez were not affected by the presence of the Union organizers, and that they did not engage in surveillance of the employees' concerted

activities.

Two contrasting pictures were drawn by the witnesses with regard to employee activity and interest during the Union's campaign which culminated in an election on October 20, a day or two after the end of the tomato harvest. The employer witnesses testified that there was no discussion regarding the Union either among the employees or between them and management. In addition, a number of them testified that they had not been approached by Union organizers during the intensive two-week campaign proceeding the election. On the other hand some of the General Counsel's witnesses testified that the Union was discussed among the employees. The Tally of Ballots disclosed there were 190 ballots cast as follows: For the Union, 105, for no Union, 71: challenged ballots, 14; and one void ballot.

During the same period the Union passed out certain leaflets and Nunn passed out some leaflets in reply. The only leaflet introduced by Respondent in evident and relating to economic conditions made comparisons between wages then paid by Respondent and by another employer; it reviewed the history of Respondent's wage rates from 1973 through 1975, showing the percentage of increase continued. General Counsel witnesses, Rosa and Rosalia Hurtado, testified that one leaflet promised wage increases from $3-25 to $3.50 per hour, undescribed medical benefits and a ten minute break every two hours. The leaflet described above relating to economic conditions was not used by Respondent in cross-examining these witnesses. Alegria Orozco testified that Nunn had spoken to the employees and promised them similar benefits. The witnesses testifying for Respondent denied seeing such leaflet or hearing such speech by Nunn or by Lopes or any other speech during the Union campaign.

Emelda Jimenez, an employee who worked in 1976 and who is not one of the discriminatees, testified that Ruiz talked to the girls several times

about the Union in two week period preceeding the election. She recalled vividly the first time: it was before noon, the girls were gathered around Ruiz in a circle, and she said, the boss did not want a union, she does not want the girls to sign for a union, and if they do, she did not want them to come back "with our tails between our legs." (Tr. VIII, 13)[5/] Maria Vega testified that Ruiz, in talking to the girls working on the tomato harvester where she worked (there were 18 to 20 girls to a machine) told then not to vote for the Union, that they don't want a union in the farm, and if the employees want a union they should go work where there is a union. Rosa Hurtado testified that Ruiz said on one occasion that those who sign for the Union won't have any more work. Raquel Vega testified that Ruiz, in a private conversation with her about 15 days before the election accused her of having signed for the Union and told her, "Poor of you, because we have already warned you that the boss did not want a union." (The interpreter stated that "poor of you" is an idiomatic Spanish expression equivalent to, I an. sorry for you). Ruiz also stated to her that rather than sign with the Union Nunn would give up his land or buy cultivating machines and automatic sorting machines so he would not use people, and added that if the employees signed with the Union she would not give them a job there any more (Tr. III, 87-88). Orozco testified that Ruiz told her that she knew the people who were involved in the Union and "next year don't come and look for a job because you're not go around and get a job". (Tr. II, 65).

Some of the employees also testified that Lopez spoke up. Lupe Martinez testified that he said, in the presence of about 35 employees about a week before the election, if the employees want the Union, they should go to the Union office and get a job, and they would get less money. Bertha

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5/ References to the transcript will be referred to as Tr, followed by he volume in Roman numerals, and the page in Arabic numerals: General Counsel Exhibits will be referred to as GC Ex—: Respondent exhibits as R Ex--.

Ordaz testified that about a week before the election Lopez told the employees working on the tomato harvesting machine with her, while they were on a break, that if there was no union in the Nunn farm the following year the employees would receive an increase in pay, medical benefits, and breaks every two hours. (Tr. III, 57-59) Nunn, Ruiz, and Lopez all denied any discussion with employees regarding the Union. All employee witnesses testifying on behalf of Respondent stated that they did not hear such statements.

At a pre-election conference held October 19, the five employee representatives on behalf of the Union were Maria and Raquel Vega, Alegria Orozco, Elena Ramirez, and Rosalia Hurtado. The three Union observers at the election held October 20 were Maria and Raquel Vega and Alegria Orozco.

Before considering the failure to rehire the alleged discriminatees in 1976, consideration must be given to Respondent's hiring procedures. All hiring was done by Ruiz. She testified that prospective employees had to make known to her their availability for employment. In the case of the hoeing work, which began generally in or after the second week in March, they had to come to her house and sign a sign-up list. She testified there was an additional sign-up list kept at the office. If an employee would phone her, she would be advised that she has to come in and sign up. Ruiz did not accept phone requests, nor did she advise employees to come in and sign up; the initiative in applying for work in all cases had to be from the employee. When Nunn told her how many hoers he needed, and when, she would go to the office, co-ordinate her list and that at the office, check the names against a seniority roster maintained by the employer, and notify the most senior of the signed-up employees to report for work.

Employees had to sign up at the office for the tomato harvest. However, Ruiz would approach the girls during the last day or two of the

hoeing season and ask them if they would, work on the harvest. If they said they would work, they signed their name or she entered their name en a sheet which she then submitted to the office.

The employees testifying on behalf of Respondent testified that they followed the procedures described above without deviation. The only exception was Martha Michel who testified that when she first sought work as a hoer in 1972 and applied for work at the office, she was sent to sign up at Ruiz' house.

General Counsel's witnesses told a different story. They testified that they never had to sign up in advance. Jimenez, the only one who worked in 1976, testified that 1976 was the first year in which she had to sign up in advance of going to work. In 197.3 and 197^ she was told by her father who was a friend of Lopez and who worked for Respondent, when to report for work. When she reported in 1973 Ruiz asked her who told her to report for work. She said Lopez, whereupon Ruiz said, OK. In 1975 Ruiz phoned her to go to work.

Lupe Martinez testified that in 1975 Ruiz telephoned her and directed her to report to work. Accordingly, she notified her relatives, Maria Vega, Raquel Vega, Lourdes Vega, and Soccoro Martinez that they could go to work. All reported for work the first day of hoeing and were put to work without having signed a sign-up sheet. Cousins Ilya and Irma Martinez returned from Perepero in April. Lupe Martinez reported their availability to Ruiz, and a few days later was directed by Ruiz to tell them to come to work.

Rosa Hurtado testified that she called Ruiz in June 1975, asking for work. Ruiz said she had work for two persons. Rosa reported for work with her sister-in-law, Rosalia Hurtado. The following week she asked Ruiz for work for others. Two weeks later she was told to ask them to come to

work, whereupon Bertha and Maria Ordaz reported for work. Later Rosa asked if there was need for other workers. She was told "by Ruiz that she did not need anyone for hoeing but there would be work in harvesting and later told her when to have them report for work. She testified that Eva and Elvira Ordaz, Juana Cortez, and Maria Elena Ramirez went to work as a result of that conversation without signing any sign-up list.

Hilda Martinez stated that she first went to work in April, 1972, that her cousin, Lupe, told her that Ruiz said she could go to work; that in 1973 she learned of the availability of work from Lupe and Maria Vega, and she did not work for Respondent in 1975. She returned from Mexico on March 28, 1976, and called Ruiz by phone. Ruiz told her that there was a new system, she had to put her name on a list and would be called from that list. She asked if Ruiz could put her name on the list. Ruiz said, yes, took her phone number and said she would call her when work became available.

Respondent introduced in evidence a notebook containing the names and phone numbers of some employees. (R. Ex. 9a, 9b, 9c, 9d, and 9e). Ruiz testified that the employees signed this, her sign-up list, for employment in 1976. She testified that in addition there were some who signed up at the office, but no identifiable sign-up list from the office was produced. In comparing the employee list for 1976 with the notebook maintained by Ruiz, it is apparent that some employees had not signed at her home. However, in view of her testimony that some may have signed at the office, and the office list was not produced, it is impossible to check the degree to which the practice to which she testified was followed by Ruiz. It should be noted that witnesses Ceja and Salinas testified that they always signed the sign-up list in Ruiz' house, and did so in 1976; however, their names do not appear on the list. A number of lists were submitted which establish that some employees

at some time used sign-up sheets in the office, but the lists were not identified as to year or crop (with a few exceptions not pertinent here).

Before leaving the question of hiring practices, it should also be noted that in 1975, Nunn managed crops for another farmer and therefore had need for a larger hoeing crew than in 1976. The records reflect that work commenced on March 15, 1976, with a, crew of 26, and that the crew was augmented by three hires on April 12,[6/] one on April 20, and two each on May 8 and 10. The record does not reflect if any quit before the hoeing was completed (R.Ex.17). The same exhibit also reflects that seven of the hires of March 15, one each of April 12, April 20, and May 8, and two of May 10, were employees who had not worked for Nunn prior to 1974.

Maria Vega testified that she returned from Mexico on January 23, 1976. She saw Ruiz in and about Brentwood during the following period, particularly specifying two times, two weeks apart, when both were at the unemployment insurance office in Pittsburg and were standing in line to file their claims for benefits. She did not contact Ruiz about work until after work started in March. Ruiz advised her she did not need her now. She contacted Ruiz again in April or May. At this time she was told Ruiz had no need for more employees for hoeing and that no more employees would be needed until the tomato harvest commences. Ruiz testified that Maria Vega called her about April 20, that she told her she did not have anything as she had only a small crew, and that there was no mention of work for the harvesting crew. Ruiz testified that she wrote Maria Vega's name in her notebook when Vega called. The date on top of the page where Vega's name appears is March 22, 76 (R.3x. 9(e)). The month, March, is crossed out in red

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6/ One of the hires on April 12, Morin, had additional duties to hoeing.

while the original notation is in blue-black ink. Ruiz explained that she had mistakenly put down the wrong month and crossed it out a few minutes later. It should be noted in this connection that the Union filed the original charge in this case alleging a discriminatory refusal to rehire on April'12, 1976, and named Vega as one of the alleged discriminatees.

Six of the alleged discriminatees were in Brentwood before hoeing commenced in 1976: Maria Vega, Lourdes Vega, Rosa Hurtado, Lupe Martinez, Soccoro Martinez and Bertha Ordaz (Tr. 11, 33; lU8; 111, *6k).* They did not seek out Ruiz because in the past she had always called them by calling one of them who would then notify the others. In 197^ it was Lourdes Vega and in 1975 it was Lupe Martinez who was called by Ruiz. They waited for a call, in 1975 and, when they learned others were working and they had not been called, Maria Vega called Ruiz on March 22 only to learn that there was no work for her or the others.

By the end of March the ranks of the alleged discriminatees were augmented by five others who had arrived from Mexico: Hilda, Irma, Elia, and Maria Mertinez, and Rosalia Hurtado. Ilda Martinez and Raquel Vega arrived in April. Only a few of them made direct application for employment to Ruiz; the rest relied on the past practice by which one is told work is available and all then show up and are put to work.

Some time shortly after the beginning of the hoeing season in 1976 Jimenez heard an employee named Lucila ask Ruiz while they were hoeing along with other workers, where the girls from Perepero were. Ruiz replied, the girls from Perepero wanted a union, they should stay with the union. Jimenez testified that she heard Ruiz make several comments regarding the girls from Perepero during the hoeing season, statements to the effect that she would

not hire then again, Ruiz denied making such statements and employee witnesses called by the Respondent uniformly denied hearing such statements.

Lupe Martinez testified that she returned to Brentwood from Mexico on March 3, 1976, that she learned that Maria Vega had called Ruiz regarding employment in March, that she went with Irma Martinez to Ruiz' house in May seeking work, and Ruiz told them that she had no work and she would call then if she needed them for the tomato harvest. Ruiz stated that when Martinez called on her in May she told her that she was laying off people "but she could go to the office as they were hiring girls in the packing shed for cherries.

IV. Discussion, analysis and conclusions.

Respondent raised a number of affirmative defences which must be considered.

Respondent contends that the complaint failed to state a cause of action. The complaint alleges that Respondent interfered with the exercise by the named employees of rights guaranteed in Section 1153 of the Act by the refusal to hire the employees at the stated tines. The rights guaranteed by Section 1152 are the rights of employees to assist or to refrain from assisting labor organizations. Accordingly, Respondent was on notice that the complaint alleged that Respondent, by its actions refused to hire the alleged discriminatees because they had engaged in activity protected by Section 1152. In Quality Rubber Manufacturing Co., 176 NLRB ^0, at page 1+5, the Board said, "The Board and courts have held that due process does not require rigidity in the relationship of pleading and proof but that the real questions are whether Respondent was adequately informed of the claims to be adjudicated and whether the issues were, in fact, fully litigated." See also, The Frito

Co. v. NLRB, 330 F.2d 458, at U65 quoting and applying Rule 15(b) of the Federal Rules of Civil Procedure to the effect that a complaint may be amended to conform to the evidence even after Judgement. The complaint clearly alleged that Respondent refused to hire the discriminatees because they engaged in protected activities. The matter was fully litigated. I therefore conclude that the complaint stated a cause of action.

Respondent contends that no proper charge was filed on which a complaint could issue. The initial charge, G. C. Ex. la, stated, in part, "The employer has specifically refused to rehire workers who evidenced support of the United Farm Workers of America, AFL-CIO this year, while giving jobs to other workers who were not in favor of UFW." The charge explicitly sets out as the alleged unfair practice the failure of the Respondent to rehire employees for the 1976 hoeing work for discriminatory reasons. Respondent's contention is without merit.

Respondent contends that the action is barred by the statute of limitations. The initial charge was filed on April 13, 1976. All failures to rehire took place on and after March 15, 1976. Section 1160.2 of the Act provides, in pertinent part, "No complaint shall issue based upon any unfair labor practice occuring more than six months prior to the filing of the charge with the Board ..." The statute of limitations relates only to the filing of the charge. Here the charge was filed well within the six month period from the date of the conduct which was the subject of the charge. Respondent's contention is without merit.

Respondent contends that the Board has acted arbitrarily, capriciously, and in utmost bad faith to Respondent's prejudice. No evidence was adduced in support of this serious charge, and it is dismissed.

Respondent contends that the Board is guilty of laches and has failed and/or refused to afford Respondent a speedy trial on the merits. There was no evidence offered to show that the Board deliberately delayed proceedings in this matter. The Supreme Court, dealing with the problem of delays by administrative agencies (as in that instance, the National Labor Relations Board), said: "The Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers" NLRB v. J.H.Rutter-Rex Manufacturing Company, 396 U.S. 258, 26U-5. See also NLRB v. Katz, 369 U.S. 736, 748, fn. 16.

Respondent contends that by failing to afford Respondent a speady trial the Board had violated the Constitutional due process rights and right to a fair and speedy trial. As in the earlier contention, there is no evidence that the Board deliberately delayed the proceedings herein.

Respondent contends that the complaint is vague and imprecise. No specifications were furnished as to what was imprecise. Respondent was given every opportunity to present evidence of every issue.

Finally, Respondent contends that the relief prayed for is unwarranted either by the law or the facts of this case. This contention is without merit in view of the findings, below, that Respondent committed unfair labor practices and an appropriate remedy is recommended.

The facts set out above reflect a sharp difference of recollection and, in many cases, a direct conflict in the evidence. As noted in footnote 2, above, all the evidence of all the witnesses has been considered, as well as their demeanor in testifying. One conclusion which readily was apparent was that the testimony of Ruiz was unreliable. Thus, while she had been a supervisor for Respondent for nine years, she testified that, as of 1974, she

had not heard of Caesar Chavez, head of the Union. Ruiz was a person who had *a.* responsible position in the farming industry. She had a television set during that period. It stretches credulity too far to believe that, living in a farming community, engaged in farming, and having access to information by television she was unaware of Chavez. She also testified that, despite an active, aggressive union organizing campaign which culminated in a representation election she did not discuss the union drive, or anything about the union's effort, either with those below her, or with Nunn. In addition, her testimony was given in a manner that did not inspire confidence. She paused frequently before replying to questions, as if trying to anticipate the consequences of her reply. In addition, her answers were at times evasive. Thus, as an illustration, when asked if she was aware whether Rosa and Rosalia Hurtado were related, her testimony is as follows:

> Q. (By Mr. Stone) You testified that you recalled Rosa Hurtado calling you some time late in the season. Is that correct?
> A. (By Julia Ruiz) Yes.
> Q. Did you know at the time that she was related to Rosalia Hurtado?
>
> *****
>
> A. Did I what?
> Q. Did you know at the time, that Rosa was related to Rosalia Hurtado?
> A. She could have, I don't ask if they are related.
> Q. You did not know that they were related?
> A. I said I didn't ask if they were related.
> Q. My question is whether you knew it, not whether you asked Rosa?
>
> (Objection and colloquy)
>
> Q. Were you aware that Rosa Hurtado was related to Rosalia Hurtado?
> A. Yes, I was aware, but *I* didn't know what they were, though.

She also professed not to know that all the alleged discriminatees except Orozco were from Perepero. In view of the fact that Ruiz and the others all worked together on hoeing, in view of the fact that all the discriminatees came to work as families, and in view of the fact that they had worked for

Ruiz either two or three years, I cannot credit her profession of ignorance on this point. Finally, there is the question of the date when Maria Vega phoned Ruiz for work in 1976. Vega testified it was in late March, after she learned that the hoeing had commenced. Ruiz testified that it was in late April, about April 22. She had made a note of it in her notebook, unbeknownst to Vega. However, the original date on the note was March 22. Ruiz stated this was an error and she was firm in her recollection the phone call was in April, that she had written March inadvertently. The charge filed on April 13 recited that Vega, among others had been refused employment (GC Ex.l(a)). Accordingly, the refusal to rehire must have been prior to April 13. The charge is consistent with Vega's testimony and is in conflict with that of Ruiz. For all the above consideration I do not credit Ruiz's testimony.

In July, 1974 Teamsters signed up some of the employees and sought recognition. Nunn refused to accord them recognition until they proved their majority in a secret ballot election. Maria and Raquel Vega, and Lupe and Hilda Martinez testified that Ruiz singled them out by name, and told the group who had signed for Teamsters that Nunn did not want a union in his farm and that she would give them another chance but if they did it again there would be no more work for them, and asked them to write to Teamstors to revoke their authoization.[7/] Lopez, they said, also spoke to them and offered them a raise in pay if they would abandon the union. Both Ruiz and Lopez deny making the statements attributed to them by the witnesses. I credit the General Counsel's witnesses. They were forthright and stood up well under cross-examination. Ruiz, on the other hand, I have found to be generally

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7/ Raquel Vega testified that Ruiz questioned her about the Teamsters list, stating that "the list already arrived at the. office" (Tr.III, 91). Teamsters had sent a demand for recognition to the employer, and not a list of signatories, It is evident that Vega misunderstood what Ruiz told her. However, it is evident from Vega's credited testimony that Ruiz in fact approached her and spoke to her about the Teamster 'onion activity.

unreliable. While I have no specific, objective criteria to evaluate his credibility, I do not believe the testimony of Lopes because it is at variance with that of Maria Vega whom I credit.

The circumstances surrounding 1975 UFW campaign which culminated in the election of October 20, are in sharp dispute. Without detailing the conflicts in testimony, but taking them all into consideration, I find the following facts.

The Union organizers sought to enlist employee support by meeting with employees both at work during lunch time and by visits at home. The Union distributed several leaflets, and Nunn distributed leaflets in response. In one of the leaflets he promised the employees that if the Union were defeated he would increase the wages of the employees (that is, the hoers and tomato sorters) from $3.25 to $"3.50 per hour, that he would provide some undescribed medical facilities, and would provide a ten minute break every two hours. Ruiz spoke to the employees several times opposing the Union during the pre-election period. Raquel Vega, Orozco and Emelda Jimenez testified that Ruiz said Respondent does not want the employees to sign for the Union. Their testimony has been quoted above. On each occasion Ruiz treatened that if the employees favor the Union they will be subject to economic reprisals. In addition, according to some witnesses, Nunn addressed the employees through Lopez, offering them the same incentives as appeared in the leaflet if they voted against the Union. Such actions--the threat of economic reprisals if the employees exercise the right to join labor organizations as guaranteed in Section 1152 or promises of rewards if they do not exercise such rights—constitute inteference, restraint, and coercion within the meaning of Section 1153(a), and by such actions Respondent engaged

in unfair labor practices proscribed in Section 1153 ([a]). However, since the complaint did not allege violation of the Act by this conduct because they are time-barred, under Section 12.60.2 of the Act, the actions described above will be considered only as evidence of anti-Union animus by Respondent,. Merzoian Brothers, etc., 3 ALR3 No. 62, fn. 9.

The complaint alleges that the named discriminatees were denied employment during the 1976 hoeing and harvesting seasons and that the Respondent thereby interfered with the rights of the employees enumerated in Section 1152. As discussed above, this allegation necessarily implies that Respondent refused to hire the alleged discriminatees because they had engaged in activity protected by Section LL52. The discriminatees concede that they did not affirmatively seek out Ruiz and make known to her that they were available for work. Instead, they relied on her to call one of them when work was available, as, they contend, she had done in previous years.

As discussed above, there is sharp dispute as to the system used before the 1976 hoeing season in the recruitment of employees. Nine employees called by Respondent as witnesses uniformly testified that they always signed up for work either at the office or at Ruiz' house. The only exception was Michel, who testified that when she first sought employment in 1972, she went to the office and was not signed up there but was directed to report to Ruiz' house where she signed the sign-up sheet indicating that at least on that occasion there was no sign-up for hoeing at the office but only in Ruiz' house.

However, the fact that all nine witnesses always followed the sign-up procedure does net establish that it vas the exclusive method adopted Respondent. All General Counsel witnesses testified that they were unaware

of the sign-up system prior to 1976. In 1974 Lourdes Vega was called by Ruiz and in 1975 Lupe Martinez was called by Ruiz, and each year all their relatives who were in Brentwood at the opening date of the hoeing season reported for work and were put to work. Employee Jimenez, not a discriminates, credibly testified that she had not signed up prior to 1976. In 1973 and 197^ Lopez told her father, and her father told her, when to report for work. In 1975 Ruiz initiated the phone call instructing her to report for work. She learned from two co-workers in 1976 that there was a new system by which she had to sign up for work. Hilda Martinez testified that when she called Ruiz in April or May 1976 for work she was told that there was a new system, that she had to have her name on the list and employees would be called from the list. I conclude, based on the credited testimony of the General Counsel's witnesses that prior to 1976 the sign-up list was not the exclusive method for seeking employment, and that Ruiz did in fact call employees who had previously worked for the employer to apprise them of the availability of work when the hoeing season was about to commence. I further find that Ruiz was aware of the practice of the discriminatees herein to call their relatives who were available for work when Ruiz called one of them, and Ruiz approved of that method of recruitment of the work force. I also find that the method of recruitment was changed in 1976 to require all applicants for employment to sign up in order to be considered for employment, and that this change was effected without prior notice to the discriminatees and to their detriment.

The next question which must be answered is, why was this change instituted? Inasmuch as Respondent denied that there was any change, no reason was adduced for such change. However, there is a basis for inference

as to the reason from the evidence. Jimenez testified credibly that she heard Ruiz state on various occasions in 1976 while at work that the girls from Perepero wanted a union so they should stay with the union, and that she would not hire the girls from Perepero again. In this connection it should be noted that the union activity of the "girls from Perepero" was known to Respondent. Four of the five employee representatives at the October 19 pre-election conference and two of the three employee representatives on behalf of the Union at the October 20 election were from Perepero. Orozco was the other employee representation on both occasions. I therefore conclude that the hiring procedure was changed, without notice to the employees, to create a justification for not rehiring employees of whom Respondent wished to rid itself.

Not all the discriminatees were active on behalf of the Union, and the General Counsel has not produced sufficient evidence to establish that Respondent was aware of the union activity of each of the discriminatees. However, even as to the discriminatees regarding whom there is no direct evidence of employer knowledge of their union activity, it is clear that Respondent treated the employees in question as a group and discriminated against all of them because they all came from Perepero and some of then were in the forefront of the union activity which Respondent was actively combatting. The National Labor Relations Board (NLRB) has held that by changing the method of rehire without notice to the employees, when done for discriminatory reasons, is violative of Section 8(a)(3) of the National Labor Relations Act (NLRB), Ernst Construction Co., 217 NLRB So. 179. Inasmuch as Section 1148 of the Act provides that the Board shall follow applicable precedents of the NLRA, it is concluded that by changing the method of rehire as described above Respondent violated Section 1153(c) of the Act.

In addition to changing the method of rehire for discriminatory reasons, Respondent in fact used the change in method as an excuse for not rehiring the discriminatees. Ruiz knew that some of the discriminatees were in Brentwood before the commencement of the hoeing season in 1976. Ruiz was at the unemployment office on two occasions, two weeks apart, in February, and possibly early March, where she was seen by Maria Vega standing in a line waiting to process her claim for unemployment benefits. Vega testified that on the first visit while she spoke to another employee while in line, Ruiz who had been looking in her direction, immediately turned away when Vega looked in her direction (Tr. II, 24). Since there were a number of persons standing in line, Ruiz and Vega had to be in line for some time and Ruiz must have seen Vega and thereby became aware that she was in Brentwood and that Vega was relying on Ruiz to call her or one of her cousins when work became available as Ruiz had called one of them in the previous years.

The reason Ruiz failed to call Vega for work is because she had determined not to rehire any of the girls from Prepero because of the union activity in which some of them had engaged. Ruiz knew of the fact that some of the girls from Perepero had signed up with Teamsters in 1974. She had warned them that pro-union activity was frowned upon by the employer and had offered them one more chance. Despite this explicit warning, they were in the vanguard of the union activity in 1975: they both represented the Union at the pre-election conference and were the observers at the representation election the following day. Ruiz resolved to rid herself of all girls from Perepero because they were all famially related and, in her mind, they were the source of the union strength. In response to a question by Lucila, Ruiz said, the girls from Perepero wanted a union, they should stay with the Union.

She also stated at various times, as Jimenez credibly testified, that she would not hire the girls from Perepero again. Thus, it is evident that Ruiz failed to recall Vega (and, through her, all other girls from Perepero who were available for work at the onset of the hoeing season) because Vega and some of the others had engaged in protected concerted activities, and because she chose to discriminate not only against those who she knew had engaged in such activity, but decided to treat all the girls from Prepero as if all had engaged in such activity. The refusal to rehire the known union adherents because of union activity is violative of Section 8(a)(3) of the NLRA and, therefore of Section 1153(c) of the Act, Doctor's Community Hospital. 227 NLRB No. Qk; Central American Airways, 20k NLRB l6l; John Hancock Mutual Life Insurance Co: 191 F2d483, k8k-6 (CA. DC, 1951) (8(a)U violations found).

The NLRB has held that it is a violation of Section 8(a)(3) of the NLRA to discharge an employee simply because he or she was a relation of a striker, even where the striker engaged in unprotected activity, North Dixie Theater, Inc., 220 NLRB 307. See also, Talladega Cotton Factory, Inc. 106 NLRB 295, enf'd 213F2d 208 (C.A.5, 1954) General Engineering, Inc., etc., v. NLRB, 311F2d 540, 544 (CA. 9, 1964).

While there is no proof that Orozco is from Perepero, it is evident that she was treated the same as the others because she had engaged in union activities and was unwelcome for that reason.

The evidence shows that a separate list was kept for employment for harvesting. However, Ruiz would interview employees in the field the last day or two of the hoeing to determine whether they wish to work in the harvest By discriminatorily refusing the discriminatees employment as hoers she foreclosed this avenue of their obtaining employment as harvesters. In

addition Maria Vega credibly testified that, when she spoke to Ruiz about employment a second time, in April or May, Ruiz said she would not need employees until the harvest commences, and she told Lupe Martinez in May that she would call her if she was needed for the tomato harvest. Accordingly, the discriminatees were reasonably justified in concluding that they had done all required of them to assure consideration for employment in the harvest, subject only to their seniority to obtain work.

Respondent contends that the discriminatees had not made a proper application for employment. The record reflects that they had previously secured employment by being called by Ruiz at the time hoeing was to commence. They were justified in relying on the continuation of that hiring practice until told of any change in the hiring practice. They were not notified of any change.

Respondent further contends that there is no proof that Ruiz knew of a telephone number where she could reach Maria Vega. She did not testify that she made an effort to reach them but did not know where. Instead, Ruiz demonstrated to the employees working in 19?6 that she had no intention of rehiring any of the discriminatees. Accordingly, whether she had or did not have a telephone number was immaterial.

Respondent cites a number of cases to the effect that employees must make the employer aware that they are available for work before a case of discriminatory failure to rehire can be established. Those cases are not in point here because the employees in this case followed the only practice they knew: they were in Brentwood, Ruiz knew at least that Maria Vega was there, and Vega, absent notice of change in procedure relied on Ruiz to call her (and through her, members of her family) when it came time to report for work. She had done everything required of her to establish that she was available for work.

Finally, Respondent contends that Vega was not ready to go to work the day she called (March 22) and that therefore she did not make a valid application for employment. A reading of all her testimony discloses that Vega would have gone to work on reasonable notice, such as a day or two, as was customary in previous years when she was called to work. Accordingly, her telephone call of March 22, constituted a valid application for employment.

It is therefore concluded that Respondent refused to rehire the discriminatees because they had engaged in activities protected in Section 1152 of the Act, or because they were related to and closely associated with employees who engaged in such activities, in violation of Sections 1153(c) and (a) of the Act, and thereby interfered with, restrained or coerced, and is interfering with, restraining or coercing its employees in the exercise of rights guaranteed in Section 1152 of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Sections 1153(c) and (a) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully failed to reinstate Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martinez, Elia Martinez, Socorro Martinez, Hilda Martinez, and Maria de Jesus Martinez at the beginning of the hoeing season on March 15, 1976; Rosa Hurtado, Rosalia Kurtado, Maria Hurtado, Bertha Ordaz, Elvira Ordaz and Eva Ordaz in about May, 1976; and Alegria Orosco in about late July or early August, 1976 to work on the tomato harvest, I will recommend that Respondents be ordered to offer each of them immediate and full reinstatement to their former or substantially

equivalent jobs. I shall further recommend that Respondent make whole each of the employees for any losses they may have incurred as a result of Respondent's unlawful discriminatory action by payment to them, of a sum of money equal to the wages they would have earned from the date of the discriminatory refusal to reinstate them to the date they are reinstated or offered reinstatement, less their net earnings, together with interest thereon at the rate of seven per cent per annum, and that the loss of pay and interest be computed in accordance with the formula adopted by the Board in Sunnyside Nurseries, Inc., 3 ALRB No. 42 (1977).

The Board has, in appropriate cases where the unfair labor practices found to have been committed by the Respondent strike at the heart of the rights guaranteed to employees by Section 1152 of the Act, issued a broad order commanding Respondent to cease and desist from infringing in any manner upon the rights guaranteed in Section 1152 of the Act. The unlawful failures to reinstate the employees herein do, indeed, constitute discriminatory conduct which *is* "inherently destructive" of important employee rights, of Great Dane Trailers, Inc., 388 U.S. 22,33; 65 LRRM 2465, 2469. However, in this case the only finding of a violation is that Ruiz failed and refused to reinstate the named employees in violation of Section 1153(c). There is no finding of other violations. I therefore do not find a basis for inference that Respondent generally maintains an attitude of opposition to the purposes of the Act. I therefore shall not recommend a broad cease and desist order.

General Counsel has requested a remedial order containing a number of provisions not called for by the circumstances of this case, including a public apology by Respondent, a public statement by Respondent, and the granting of access to the Union prior to and during the next peak season, and granting of posting privileges to the Union. There is no evidence that Respondent has unlawfully restricted access by the Union. Under the circumstance

an order as prayed for would be punitive and not remedial. In addition, the notices provided herein need only be sent to employees protected by the provisions of the Act. Since the Act became effective on August 25, 19V5j no notices need be sent to employees who did not work after that date. The order recommended herein is one designed to remedy the unfair labor practices found herein and to provide for effective communication of the outcome of the proceedings to the employees and for the policing of the order by the Board.

Upon the foregoing findings of fact and conclusions of law, and the entire record, and pursuant to Section 1160.3 of the Act, I issue the following recommended:

ORDER [8/]

Respondent, Ron Nunn Farms, its officers, agents, successors and assigns shall cease and desist from discouraging membership of employees in the United Farm Workers of America, AFL-CIO, or any labor organization, by refusing to rehire employees, or in any other manner discriminating against employees in regard to their hire, tenure, or terms and conditions of employment, except as authorized by Labor Code § H53(c).

Respondent shall take the following affirmative action designed to effectuate the policies of the Act:

a. Immediately offer Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martines, Elia Martinez, Socorrc Martinez, Hilda Martinez, Maria de Jesus Martinez, Rosa Hurtado, Rosalia Hurtadc, Maria Hurtado, Bertha Ordaz, Elvira Ordaz, Eva Ordaz and Alegria Orozco- reinstatement

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8/ In the event no exceptions are filed as provided by Section 1160.3 of the Act, the findings, conclusions, and recommended Order shall become the findings, conclusions, and Order of the Board and become effective as herein prescribed.

to their former or substantially equivalent jobs without prejudice to their seniority or other rights and privileges, and make them whole for any losses they have suffered as a result of their lay-off.

b. Preserve and upon request make available to the Board or its agents, for examination and copying, all payroll records and other records necessary to analyze the amount of back pay due and the rights of reinstatement under the terms of this Order.

c. Post copies of the attached notice at times and places to be determined by the regional director. Copies of the notice shall be furnished by the regional director in appropriate languages. Respondent shall exercise due care to replace any notice which has been altered, defaced, or removed.

d. Hand out the attached notice to all present employees and to all employees hired in the next twelve months.

e. Mail copies of the attached notice in all appropriate language,

within 20 days from receipt of this Order, to all employees employed during the period from August 28, 1975 to date.

f. A representative of Respondent or a Board agent shall read the attached notice in appropriate languages to the assembled employees of Respondent on company time; The reading or readings shall be at such times and places as are specified by the regional director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors- and management, to answer any questions employees may have concerning the notice or their rights under the Act. The regional director shall determine a reasonable rate of compensation to be paid by the Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question and answer period.

g. Notify the regional director in writing, within 20 days from the receipt of this Order, what steps have been taker, to comply with it. Upon request of the regional director, the Respondent shall notify him periodically thereafter in writing what further steps have been taken in compliance with this Order.

Ben Gordsky
Administrative Law officer

Dated: December *9,* 1977

NOTICE TO WORKERS

After a trial where each side had a chance to present its case, the Agricultural Labor Relations Board has found that we interfered with the rights of our workers. The Board has told us to send out and post this Notice.

We will do what the Board has ordered and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farm workers these rights:

(1) to organize themselves;

(2) to form, join or help unions;

(3) to bargain as a group and choose whom they want to speak for them;

(4) to act together with other workers to try to get a contract or to help or protect one another;

(5) to decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL offer Maria de Jesus Vega, Raquel Vega, Lourdes Vega, Lupe Martinez, Irma Martinez, Elia Martinez, Soccoro Martinez, Maria de Jesus Martinez, Rosa Hurtado, Rosalia Hurtado,

Maria Hurtado, Bertha Crdaz, Elvira Ordaz, Eva Crdaz, and Alegria Orozco their old jobs back, if they want them, and we will pay each of them any money each nay have lest because we did not rehire then in 1976.

Dated:

Ron Nunn Farms

By: _____
(Representative) (Title)

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California. DO NOT REMOVE OR MUTILATE.